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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Application of BellSouth Corporation,
BellSouth Telecommunications, Inc.
and BellSouth Long Distance, Inc.
for Provision of In-Region, InterLATA
Services in Louisiana

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CC Docket No. 98-121

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

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EXECUTIVE SUMMARY

Very little has changed in the months since the Commission denied BellSouth's two premature applications for section 271 authority. CLECs have been able to wrest away from BellSouth less than two-tenths of one percent of local loops in Louisiana. Indeed, BellSouth's own data reveal that its total numbers of both residential and business lines actually increased over the prior year, its interstate access revenues increased over the prior year, its revenue from high capacity lines increased a staggering 44% over the prior year, and its revenue from vertical features increased 19% from one year ago -- all leading to over \$2.3 billion in local service revenues in the second quarter of 1998 alone.^{1/} Every relevant indicator shows that BellSouth's control over the local market remains unchecked.

The reasons that BellSouth's control over the local market remains undiminished could not be more clear. Having insisted on a roadmap providing guidance from the Commission, the Department of Justice ("DOJ"), and state commissions on what is required to open its market, BellSouth has chosen to ignore the guidance it received. Although it has hand-picked a few deficiencies identified by the state and federal regulators that it was willing to correct, all of the critical barriers to entry that were present at the time of BellSouth's prior application remain intact.

It is important to highlight three of these artificial barriers at the outset. First, well aware that combinations of unbundled elements hold out the only near-term hope for widespread local competition, BellSouth still insists on limiting CLECs to collocation -- the single most discriminatory and expensive method of recombining elements BellSouth chooses to tear apart. Indeed, BellSouth uses this barrier to deny access to efficient digital and data technologies CLECs require in order to have a meaningful opportunity to compete.

^{1/} See <http://www.bellsouthcorp.com/investor/download/data.html> (downloaded July 27, 1998).

Second, comfortable in the knowledge that CLECs remain completely dependent on BellSouth's wholesale inputs, BellSouth utterly ignores the Commission's and the DOJ's call for performance standards and self-executing remedies that are necessary for BellSouth to provide adequate service to its competitors. Instead, BellSouth attempts to divert the Commission's attention away from this gaping hole by focusing only on performance reporting requirements. Only the certainty of strict, self-executing remedies for violation of specific performance standards will provide a check on BellSouth's incentive and ability to provide poor service to CLECs. The Commission should make clear that it did not emphasize the need for standards and remedies in its prior orders for no reason; unless the standards and remedies are in place -- whether by negotiation, state order, or otherwise -- section 271 entry must be denied.

Finally, the Commission is well aware of the status of BellSouth's OSS development. BellSouth's OSS remains a work in progress, but BellSouth has chosen to challenge the Commission's authority by refile for section 271 authorization before it has corrected specific and serious OSS deficiencies the Commission could not have spelled out more clearly. In addition, in the months since its last application BellSouth violated the Act in multiple other respects MCI identifies below.

MCI's Comments are organized as follows:

Part I explains that BellSouth has not satisfied the threshold requirements of "Track A" because it has not proven that there are competing facilities-based providers of residential and business service in Louisiana. Part I further shows that PCS providers are not "competing providers" within the meaning of Track A because PCS service is nowhere close to serving as a substitute for BellSouth's wireline service. Even if PCS were competitive with wireline service on the basis of price -- which it clearly is not -- PCS cannot be deemed a substitute for wireline until multiple technical deficiencies are resolved, including the inability of homeowners to have more than one handset (without incurring the exorbitant cost of separate pricing plans for each handset, and the inconvenience of a separate number for each handset),

grossly inferior data capabilities, the inability to send caller location for 911 calls, and the inability to port a customer's existing number.

Part II explains that BellSouth continues to block competition by refusing to offer unbundled elements consistent with the requirements of the Act. First, BellSouth refuses to provide nondiscriminatory access to its network to allow CLECs to reassemble combinations of elements that BellSouth chooses to dismantle unnecessarily. BellSouth's insistence that CLECs can obtain such access only through the arduous and expensive process of collocating violates the express requirements of the Act and discriminates against BellSouth's competitors. BellSouth's decision to insist on the single most costly and discriminatory means of access to its network significantly reduces the possibility of meaningful local competition in Louisiana.

The Commission and the Department of Justice have previously found BellSouth's applications defective on the ground that BellSouth had not provided CLECs a nondiscriminatory method to put elements back together. Nothing has changed in this application. BellSouth still fails to submit any evidence that it has provided CLECs a reasonable method to recombine these elements. In particular, it still fails to present evidence of any practical experience of CLECs combining critical elements such as loop and switch in the manner it suggests, let alone any evidence that it would even be possible in commercially significant quantities. Moreover, the sole method BellSouth proposes -- collocation -- suffers from the same defects that the Department identified and that caused the Commission to reject BellSouth's two previous applications: critical terms of the collocation arrangements BellSouth offers are nowhere set out in the interconnection agreements it relies on to support its Track A application, or even in BellSouth's SGAT. Instead BellSouth relies almost exclusively on non-binding terms and procedures contained in its "Collocation Handbook."

BellSouth's failure to grapple with the practical problems created by its decision to tear loop and switch apart, and to require collocation to put them back together, points to a larger problem. The truth

is that even a perfectly designed collocation system can never adequately function as the only way to combine loops and switches pointlessly taken apart by the BOCs. The Commission should take this opportunity to make clear that collocation can never be the only method offered to combine network elements.

BellSouth goes so far as to insist on separating the loop from the switch even when it offers loops that cannot be physically disconnected from the switch, because the loop enters the switch as part of an integrated digital loop carrier ("IDLC"). Thus, BellSouth refuses to offer CLECs the right to lease its IDLC loops at all, leaving competitors unable to offer their retail customers the same quality of service BellSouth provides to its own retail customers and unable to offer certain services at all.

Nor has BellSouth carried its burden of proving that it is either willing or capable of making xDSL facilities available to CLECs on reasonable and nondiscriminatory terms. Given that most of the future growth in the telecommunications industry will involve data traffic, a BOC that does not make such technology available can hardly be said to have satisfied the checklist or proved that its local market is "irreversibly open" to competition.

BellSouth also refuses to provide reasonable and nondiscriminatory access to unbundled loops in a manner that allows their efficient combination with unbundled transport. By requiring collocation for access to unbundled loops, BellSouth raises CLECs' costs and introduces unnecessary points of failure.

Second, BellSouth is openly violating the Act's requirement that it provide directory assistance listings on nondiscriminatory terms by refusing to provide CLECs selected directory listings (those of other CLECs and independents), even though BellSouth offers all these listings to its own customers. This is patently discriminatory. BellSouth's argument that it can "contract out" of requirements of federal law by agreeing to keep some listings to itself -- i.e., include listings in its own directory service but not in CLECs' -- is devoid of merit. BellSouth can no more agree privately not to share directory

listings than it can agree with a manufacturer not to provide CLECs access to loops or switching. Any such agreement is unenforceable.

Third, BellSouth has failed to provide MCI with unbundled trunk ports despite MCI's repeated requests over the past seven months. MCI's requests have been met with repeated stonewalling and excuses. The bottom line is that MCI long ago requested this network element and BellSouth has not provided it, in direct contravention of the requirements of the competitive checklist.

Part III explains that BellSouth has completely disregarded the pronouncements of the Commission, supported by the Department of Justice, establishing that performance standards are essential to opening local markets to competition. BellSouth steadfastly refuses to commit to performance standards, let alone standards backed by self-executing remedies, which are needed to hold BellSouth to its duty to provide interconnection, resale and unbundled element on reasonable, nondiscriminatory terms and to prevent backsliding following section 271 entry. BellSouth resisted federally imposed performance standards by pointing to the supposed success of the process of private negotiation and standard setting by state commissions, only to refuse to negotiate any performance standards with MCI and to oppose standard setting by the Louisiana PSC. The Commission must put an end to this shell game and reconfirm that performance standards and self-executing enforcement mechanisms are required to gain section 271 entry. Local competition is destined to fail without strong mechanisms to deter the BOCs from acting on their incentives to retain customers by discriminating against competing carriers.

Part IV explains that BellSouth continues to provide OSS on unreasonable, discriminatory terms, including its failure to correct multiple deficiencies identified by the Commission, the Georgia PSC and the Florida PSC -- deficiencies that apply to the same region-wide OSS BellSouth relies upon in support of this application. Among the many continuing defects in BellSouth's OSS are its use of a manual process of notification for service jeopardies, its inability to ensure CLECs access to due dates

equivalent to the access BellSouth enjoys, and a flow-through rate for CLECs' simple POTS orders that is inferior to that received by BellSouth's retail customers. BellSouth's OSS contains many other important deficiencies as well.

BellSouth's OSS is especially deficient with respect to unbundled elements. BellSouth lacks any process of "loss notification" to inform CLECs that one of their UNE customers has switched to another carrier. BellSouth entirely lacks an automated process for ordering UNEs for customers who wish to migrate some but not all of their service to a CLEC ("split accounts") -- a very common type of order at the early stages of competition. BellSouth also lacks an automated process for ordering local number portability ("LNP") and returning provisioning notices -- meaning that any orders for loops with LNP, a critical type of order that MCI intends to use, have to be placed manually. And BellSouth entirely lacks data, even internal test data, to show that its EDI interface is operationally ready to receive even those UNE orders BellSouth claims it is capable of receiving. As a result of these and other deficiencies, BellSouth remains far from meeting its burden of providing reasonable, non-discriminatory OSS.

Part V explains that BellSouth has violated other checklist requirements, including preventing MCI from using customized routing for operator service calls by refusing to employ Feature Group D signaling that is used by MCI and other CLECs. The impact of BellSouth's refusal to allow MCI to use its own operator services is exacerbated by BellSouth's alternative. In order to use BellSouth's operator services for MCI customers, and brand the calls with MCI's name, BellSouth insists that MCI purchase dedicated trunking between BellSouth's platform and every end office from which MCI wants operator calls to be branded -- a completely unreasonable and prohibitively costly condition. BellSouth further violates the checklist by refusing to provide reciprocal compensation to MCI at a tandem rate, even though MCI's switches serve the function of tandem switching, and by refusing to provide reciprocal compensation for traffic terminated to Internet service providers, despite multiple state commission orders enforcing commitments made by BellSouth and other ILECs in their interconnection agreements

to make such payments. In addition, BellSouth continues to cause MCI's customers to lose service by failing to coordinate interim local number portability cutovers.

Part VI discusses BellSouth's failure to demonstrate that it will comply with the requirements of section 272, including its failure to demonstrate present or future compliance as to transactions between BellSouth and its long distance affiliate, and its failure to adopt performance standards governing exchange access.

Part VII explains that key prices associated with physical collocation and unbundled loops still have not been announced, and those rates that BellSouth does offer are not cost-based or forward-looking, precluding the use of unbundled elements as a viable entry strategy for all residential and many business subscribers in Louisiana. Many of the rates for network elements BellSouth offers were adopted by the LPSC based on the recommendations of a consultant who admitted she did not have time even to look at the CLECs' cost models. The rates BellSouth offers violate the Act in numerous respects, including that they are not geographically deaveraged, and they include grossly inflated recurring and non-recurring charges that are not based on forward-looking efficient technology.

Part VIII explains that BellSouth has not come close to demonstrating that interLATA entry in Louisiana would be in the public interest at this time. BellSouth's public interest argument rests on the fundamentally flawed premise, already soundly rejected by the Department and the Commission, that its entry into the robustly competitive long distance market would somehow force development of local competition, even though its bottleneck power remains firmly in place, and even though it has not taken the necessary steps to irreversibly open its local market to competition. Congress made clear, as the Commission has in its prior orders, that local competition may never develop if BOCs are allowed to offer in-region interLATA service while they retain control of the local bottleneck. Moreover, BellSouth's refusal to reduce access charges to cost will unfairly handicap competitors from competing on equal terms with BellSouth's long distance affiliate. Finally, it would plainly defeat the public

interest to accede to BellSouth's strategy of obtaining section 271 approval without addressing or rectifying multiple obstacles to local competition identified by the Department and by the Commission in its prior decisions.

In short, BellSouth's application is fatally flawed in multiple respects, including many previously identified by the Commission, and should therefore be denied.

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EXHIBITS

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A	Declaration of Marcel Henry	Checklist & Public Interest Issues: unbundled elements, combinations, performance standards, directory assistance, customized routing, unbundled trunk ports, ILNP cutovers, reciprocal compensation, CPNI
B	Declaration of Bryan Green	Checklist Issues: OSS
C	Declaration of Glen Grochowski	Checklist Issues: IDLC, xDSL
D	Declaration of Don Wood	Checklist and Public Interest Issues: Pricing
E	Declaration of Robert Hall in CC Docket No. 97-208	Public Interest
F	Reply Declaration of Robert Hall in CC Docket No. 97-211	Public Interest
G	Declaration of Kenneth Baseman and Frederick Warren-Boulton in CC Docket No. 97-208	Public Interest
H	Declaration of Carol Inniss	Public Interest: CLEC market share in Louisiana
I	Declaration of A. Daniel Kelley in CC Docket No. 96-262	Public Interest
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J	<u>In re BellSouth Telecommunications, Inc.'s Entry into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996</u> , Docket No. 97-00309, Transcript of Proceedings (May 7, 1998) (excerpt)	
K	North American Numbering Council, Local Number Portability Administration Working Group Report on Wireless Wireline Integration	
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M	<u>Consolidated Petitions of New England Tel. & Tel. Co. d/b/a Bell Atlantic-Massachusetts</u> , Phase 4-E, Mass. Dep't of Pub. Util. (March 13, 1998)	

N	Commission Recommendation, <u>Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market</u> , Texas PUC Docket No. 16251 (June 1, 1998)
O	<u>Petition of Bell Atlantic-Pennsylvania, Inc. for a Determination of Whether the Provision of Business Telecommunications Services is Competitive under Chapter 30 of the Public Utility Code</u> , Pennsylvania Public Utility Commission Docket No. P-00971307, Recommended Decision (July 24, 1998)
P	Bowman Rebuttal Testimony on behalf of BellSouth, South Carolina PSC Docket No. 97-239-C (Mar. 2, 1998)
Q	Bowman Testimony on behalf of BellSouth, South Carolina PSC Docket No. 97-239-C (Feb. 17, 1998)
R	Bellcore Memorandum TM-25704, <u>Guidelines for High Speed Analog Data Transmission in the Switched Network</u>
S	Carter Reply Testimony, CPUC Docket No. 93-04-003 (Apr. 27, 1998)
T	TRA Directors' Conference, Docket No. 97-01262 (June 30, 1998)
U	Florida PSC Order, Docket No. 960786-TL (Nov. 19, 1997)
V	BellSouth's Comments on Interim Service Quality Performance Measurements, <u>In re: BellSouth Telecommunications, Inc. Service Quality Performance Measurements</u> , LPSC Docket U-22252 (July 10, 1998)
W	<u>MCI Telecommunications Corp. v. Bell Atlantic-Virginia, Inc.</u> , No. 3:97CV629 (E.D. Va. July 1, 1998); <u>U S West Communications, Inc. v. MFS Intelnet, Inc.</u> , No. C97-222WD (W. D. Wash. Jan. 7, 1998)
X	<u>Illinois Bell Tel. Co. v. Worldcom Technologies</u> , No. 98 C 1925 (N.D. Ill. July 21, 1998)
Y	Gillan Testimony on behalf of the Florida Interexchange Carriers Association, Florida PSC Docket No. 920260-TL (Nov. 8, 1993)
Z	MCI Comments on Further Notice of Proposed Rulemaking, CC Docket No. 96-149 (Feb. 19, 1997)
AA	<u>Application of BellSouth BSE, Inc. for Authority to Provide Local Exchange Service</u> , Kentucky PSC Case No. 97-417 (June 8, 1998)
BB	<u>Application of BellSouth BSE, Inc. for a Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Service as a Competing Local Provider in North Carolina</u> , North Carolina PUC Docket No. P-691 (Apr. 24, 1998)
CC	Merrill Lynch, "The Business Line Migration Phenomenon: The Numbers Don't Lie, ILEC Line Growth Remains Robust" (June 12, 1998)

DD	BellSouth General Subscriber Services Tariff for Louisiana (excerpts)
EE	Prudential Securities, "BellSouth Reports 2Q98 EPS of \$0.82 Versus Our \$0.81 Estimate" (July 22, 1998)
FF	Letter from Paula D. Smith, BellSouth, to Alabama PSC (May 8, 1998), and Letter from Robert W. Burnett, BellSouth, to Alabama PSC (filed July 1, 1998)
GG	MCI Telecommunications, "Absence of Competition in the Exchange Access Market" (May 7, 1998)
HH	NYNEX advertisement, Arizona Republic, at A10 (Sept. 9, 1996)
II	Letter from Jonathan B. Sallet, MCI, to William Kennard, Chairman, FCC (Mar. 2, 1998), Letter from Mark C. Rosenblum, AT&T, to William Kennard, Chairman, FCC (Mar. 5, 1998), and Letter from J. Richard Devlin, Sprint, to William Kennard, Chairman, FCC (Mar. 4, 1998)

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COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

I. BELLSOUTH HAS NOT MET THE THRESHOLD REQUIREMENTS OF TRACK A

As a threshold matter, BellSouth must prove either that it satisfies "Track A" of section 271 or that it is eligible to proceed under "Track B."^{2/} BellSouth invokes Track A, and makes no attempt to prove that it may proceed under Track B. To meet Track A, BellSouth must show that it is providing interconnection and access to one or more "competing providers" of telephone exchange service, and that those competitors provide service to both "residential and business subscribers" at least "predominantly" over their own facilities. 47 U.S.C. § 271(c)(1)(A). Moreover, carriers that provide service to a *de minimis* number of subscribers are insufficient -- Track A requires competitors that present an "actual commercial alternative" to BellSouth's local service. Application by SBC to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, ¶ 14 (rel. June 26, 1997) ("Okla. Order"); Mich. Order ¶ 77. BellSouth has failed to prove that any wireline competitors provide service to residential subscribers predominantly over their own facilities, and the wireless carriers relied on by BellSouth are not "competing providers" within the meaning of Track A.

^{2/} See 47 U.S.C. § 271(d)(3)(A); Application of BellSouth Corp. Pursuant to Section 271 of the Communications Act of 1934 to Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, ¶ 8 (rel. Dec. 24, 1997) ("La. Order"); Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, ¶¶ 7-8 (rel. Aug. 19, 1997) ("Mich. Order").

A. BellSouth Has Not Shown that Any Wireline Competitors Are Providing Predominantly Facilities-Based Service to Residential Customers.

Track A reflects Congress's determination that local exchange markets will not be truly competitive until new entrants are providing facilities-based service to both residential and business subscribers. The requirement that competing carriers provide service either exclusively or predominantly over their own facilities stems from Congress's awareness that pure resale creates only limited opportunity for competition -- because resellers of the incumbent's local service can offer only what the incumbent offers -- and that resale competition does not demonstrate a BOC's compliance with all of the market-opening requirements of the competitive checklist. *See* H.R. Rep. No. 104-204, at 76-77. The fact that Congress expressly required competitive services to be provided to residential *and* business subscribers shows that Congress recognized the distinct markets for residential and business services, and understood that the Act should bring competition to both.^{3/} Thus, Track A is carefully crafted to condition eligibility under section 271 on the presence of at least one competing provider of predominantly facilities-based service in each segment of the local market, business and residential.^{4/}

Although BellSouth appears to have identified at least one wireline carrier that provides business services either exclusively or predominantly over its own facilities (BST Br. at 5; BST Wright Conf. Ex. C), it is not clear that any of these CLECs serves enough customers to be considered "an actual commercial alternative" to BellSouth. *See Okla. Order* ¶ 14. BellSouth has not shown that any wireline carrier provides residential services either exclusively or predominantly over its own facilities. Of the six

^{3/} In addition to purposefully identifying both business and residential subscribers in the text of section 271(c)(1)(A), Congress took care in its discussions of the "facilities-based provider" requirement to point out that facilities-based competition was possible even in the residential market. *See* H.R. Conf. Rep. No. 104-458, at 148; H.R. Rep. No. 104-204, at 77. *See also* Letter from Susan Ness, Commissioner, FCC, to Senator Sam Brownback (Apr. 22, 1998) ("It appears to me that [Track A] was drafted to contemplate a condition in which both residential *and* business subscribers are being served 'predominantly' over the facilities of a carrier other than the [BOC].").

^{4/} The Commission has held that a BOC can satisfy Track A if one competitor provides residential services predominantly over its own facilities and a second competitor provides business services predominantly over its own facilities. *See Mich. Order* ¶ 82.

wireline carriers relied upon by BellSouth, only one -- KMC Telecom, Inc. -- provides facilities-based service to any residential customers at all, and KMC plainly does not serve its residential customers predominantly over its own facilities. By BellSouth's own calculation, KMC serves fewer than ten residential lines with its own facilities. See BST Wright Public Aff. ¶ 66. In contrast to this commercially insignificant number of facilities-based residential lines, KMC serves "hundreds" of residential lines with resale. Id. ¶ 91. Moreover, KMC has focussed its facilities-based entry efforts to date on the business market. See id. ¶ 90 (noting that KMC's local exchange service tariff does not distinguish between residential and business services but is priced to compete with BellSouth's business services). Thus, KMC is predominantly a reseller in the residential market, precisely the sort of carrier that Congress intended to exclude from the "facilities-based competitor" requirement of Track A.^{5/}

The purpose of the predominance requirement is to ensure that the BOC faces the competitive threat of facilities-based providers, both for business customers and for residential customers. See H.R.

5/ DOJ has argued that Track A can be satisfied by a facilities-based provider of business services that also serves residential customers through resale, see DOJ Okla. Addendum, at 3-4, and three Commissioners have tentatively endorsed that position. See BST Br. at 8 n.5. For the reasons discussed in this section, however, the purpose of Track A's "predominantly" requirement is served only when residential services and business services are each provided predominantly over facilities. As discussed above, only facilities-based competition effectively disciplines the market power of the BOC and demonstrates the openness of the market, and Congress plainly intended the benefits of such competition to reach both business and residential customers.

But even if the Commission were to accept the DOJ's position, BellSouth would still need to show that business and residential services are each being provided by at least one predominantly facilities-based CLEC -- that is, a CLEC that is facilities-based overall (considering business and residential customers together). Even under this test, BellSouth has not satisfied Track A. Every wireline CLEC that is currently serving residential customers in Louisiana is predominantly a reseller, even when its business and residential lines are considered together. See BST Wright Conf. Ex. C. (Although one predominantly facilities-based provider of business services serves a single residential line through resale, that does not qualify it as a competing provider of residential services for purposes of Track A. A CLEC that serves one customer does not provide an "actual commercial alternative" to BellSouth. Okla. Order ¶ 14; see SBC Communications, Inc. v. FCC, 138 F.3d 410, 416 (D.C. Cir. 1998) (affirming the Commission's interpretation of "competing provider" to require "an actual commercial alternative" to the BOC's local service); Mich. Order ¶ 77 ("there may be situations where a new entrant may have a commercial presence that is so small that the new entrant cannot be said to be an actual commercial alternative to the BOC").)

Conf. Rep. No. 104-458, at 147-48. BellSouth's efforts to show that wireline carriers in Louisiana satisfy Track A fail to give any meaningful content to the requirement that CLECs provide service to both residential and business customers at least predominantly over their own facilities. BellSouth first attempts to read the "predominantly" requirement completely out of the Act, arguing that the existence of six CLECs that collectively serve any number of business and residential customers with their own facilities is all that is required to meet Track A. See BST Br. at 6. Indeed, BellSouth does not even attempt to show that ACSI, AMC, Hyperion, KMC, Shell, and AT&T satisfy the "predominantly" requirement, either collectively or in any combination. None of these CLECs serves more residential lines with facilities than with resale or exhibits any other indicia of serving residential customers predominantly with facilities. See BST Wright Conf. Ex. C. The application must therefore be denied.

As an alternative theory, BellSouth argues that Track A is satisfied if can concoct any permutation of CLECs that together serve residential customers (even if only by resale) and business customers, as long as in the aggregate the CLECs BellSouth selects serve more facilities-based lines than resold lines. See BST Br. at 7. Thus, BellSouth contends that it can combine several facilities-based providers of business services (Hyperion, AT&T, and Shell) with a single, smaller reseller of residential services (Louisiana Unwired), and thereby satisfy Track A. See id. BellSouth's attempt to meet Track A by aggregating the lines of selected CLECs is flatly contrary to Congress's stated intent, as well as to common sense.

In the first place, and most importantly, providers who exclusively resell BellSouth's services do not "count" for purposes of Track A. BellSouth seeks to aggregate the lines of a pure reseller with those of facilities-based carriers in order to achieve a combination that includes both business and residential services and that serves more total lines with facilities. But, as Chairman Kennard recently noted, Congress clearly stated its intent that carriers that provide service exclusively through resale cannot be considered "competing providers" for purposes of Track A. See Letter from William E. Kennard,

Chairman, FCC, to Senator Sam Brownback (May 15, 1998). The Conference Report makes this clear: “[T]he conference agreement includes the ‘predominantly over their own telephone exchange facilities’ requirement to ensure a competitor offering service exclusively through the resale of the BOC’s telephone exchange service does not qualify” H.R. Conf. Rep. No. 104-458, at 148. Pure resellers were excluded in order to serve the Act’s goal of opening local markets to competitors that can offer innovative services without dependence on the BOC. Congress recognized that Track A is not satisfied unless predominantly facilities-based competitors are serving both residential and business competitors. Thus, pure resellers can play no part in a BOC’s showing that it meets Track A.

Even BellSouth acknowledges that perverse outcomes could result if the “predominantly” requirement were evaluated by aggregating the lines of multiple CLECs -- a BOC could satisfy Track A if the lone CLEC in the state served 2500 business customers and 2500 residential customers over its own facilities, but it would not satisfy Track A if a second CLEC entered the market and signed up 10,000 resale customers. See BST Br. at 9. BellSouth attempts to avoid this absurdity by arguing that it should be permitted to choose whichever combination of CLECs it wishes, and aggregate only the lines of those selected CLECs. That position leads to even more nonsensical results. For example, if there were four resellers in a state serving 5, 500, 5,000 and 50,000 residential customers respectively, and one facilities-based CLEC with 10 business customers, BellSouth would include only the smallest reseller to satisfy Track A, in order to show a high facilities-to-resale ratio. It would defy Congress’s intent to create a test under which Track A is satisfied by finding a carrier that presents the least possible threat to the BOC’s monopoly -- a pure reseller with a small presence. Indeed, under BellSouth’s test, it would not meet Track A if this same reseller vastly expanded its service to serve many more resale customers, because it would destroy the facilities-to-resale ratio.

Congress did not design the “predominantly” requirement to ensure that a BOC could point to some combination of CLECs that serves more lines with facilities than with resale. As BellSouth notes,

the presence of more -- and more successful -- resellers should not necessarily foreclose Track A. What Congress designed the predominance requirement to ensure is that the BOC faces the competitive threat of facilities-based providers, both for business customers and for residential customers. See H.R. Conf. Rep. No. 104-458, at 147-48. Therefore, the test for predominance must look to individual CLECs to see whether any single CLEC is providing residential services predominantly over its own facilities, and whether any single CLEC is providing business services predominantly over its own facilities. Whether business or residential services are provided “predominantly” over facilities must be determined based on the totality of the relevant circumstances. These circumstances include not only the number of lines served by each service delivery method, but also such factors as investment in facilities rather than resale, sunk costs in facilities rather than resale, and plans to migrate customers from resale to facilities. Any test for “predominantly” that aggregates CLECs and mindlessly totals their facilities-based and resold lines simply makes no sense. Because, as Congress determined, resale is not a sufficient competitive check on the BOC’s power, a test that comprehensively considers all relevant factors is the only test that can ensure that both segments of the market can support meaningful, long-term competition. See generally Baseman Aff. ¶¶ 40-42 (explaining that “[r]esale competition by itself cannot provide effective local competition to the ILEC”) (ex. G). BellSouth’s application must be denied because it cannot meet this test.

B. BellSouth Has Not Shown that PCS Carriers are “Competing Providers” Within the Meaning of Track A.

Track A requires BellSouth to show that it is providing interconnection and access to at least one “competing provider[] of telephone exchange service.” 47 U.S.C. § 271(c)(1)(A). The Commission reiterated that requirement in response to BellSouth’s first section 271 application for Louisiana, stating that a PCS provider cannot qualify under Track A unless it “offers service that both satisfies the statutory definition of ‘telephone exchange service’ . . . and competes with the telephone exchange service offered by the applicant in the relevant state.” La. Order ¶ 73. The Commission further emphasized that a

“competing provider” must present “an actual commercial alternative to the BOC.” Id. (quoting Okla. Order ¶ 14; Mich. Order ¶ 75). BellSouth’s reliance on PCS carriers for purposes of satisfying Track A is unavailing because PCS carriers in Louisiana today are not “competing providers” that offer customers “an actual commercial alternative” to BellSouth’s local service.

In order to truly compete with BellSouth, a PCS provider must offer an effective substitute for BellSouth’s wireline local service. To interpret Track A otherwise would render its requirements meaningless and contradict the intent of Congress. In requiring a BOC to demonstrate the existence of a competing carrier that provides service over its own facilities to business and residential customers, Congress set forth a threshold requirement for BOC entry into the in-region long distance market. That requirement is intended to enable the Commission to ensure that there is some “tangible affirmation that the local exchange is indeed open to competition.” H.R. Rep. No. 104-204, at 76-77 (quoted in Okla. Order ¶ 42). There can be no such “tangible affirmation” unless consumers have a choice between reasonably substitutable products. Thus, an antitrust-type analysis of substitutability -- assessing whether a provider’s services are “reasonably interchangeable” (United States v. E.I. du Pont de Nemours & Co., 351 U.S. 377, 404 (1956)) with those of the BOC -- is the only way to determine whether the local market has been opened. Congress understood that a competing provider’s services must be substitutable for those of the BOC, see H.R. Rep. No. 104-204, at 77 (excluding cellular providers from Track A because “the Commission has not determined that cellular is a substitute for local telephone service), and the Commission recognized as much when it concluded that a competing provider under Track A “must be an actual commercial alternative to the BOC.” Okla. Order ¶ 14.

Today, PCS is not an effective substitute for local wireline service. In December 1997, the Department of Justice concluded that “PCS and wireline service are not currently close substitutes in Louisiana,” because PCS is “substantially more expensive than wireline service for the great majority of customers” and is priced differently, charging for both outgoing and incoming usage. DOJ La. Eval. at

7-8. That conclusion remains true. Although, as the Commission recently suggested, a PCS carrier could *potentially* compete in the local market on the basis of price^{6/} by creating pricing plans that encourage its customers to use PCS as a substitute for wireline service, see Third Annual CMRS Competition Report, FCC 98-91, at 27 (rel. June 11, 1998), PCS carriers are not yet doing so in any competitively significant way. The Commission noted in the CMRS Report that the ratio of wireless pricing to wireline pricing is still close to 5-to-1, and “[t]his price differential means that wireline networks capture the large majority of customers’ total minutes of use.” Id. at 26-27.^{7/}

BellSouth does not even argue that PCS is a wireline substitute for any but a small subset of residential subscribers -- a concession that is fatal to its reliance on Track A. Even crediting BellSouth’s dubious data concerning the number of PCS users in Louisiana who use PCS as a substitute for wireline, PCS usage represents only 0.40 percent of BellSouth’s total loops in Louisiana -- a *de minimis* amount.^{8/}

Indeed, BellSouth exaggerates the size of the subset that potentially could substitute PCS for wireline. BellSouth’s assertion that 7 to 15 percent of BellSouth’s local residential customers could pay less by switching to PrimeCo, BST Br. at 14, is based on a study that systematically overstates the prices that are paid to BellSouth by those customers. Because some PCS plans include five vertical features within the regular monthly charge, BellSouth’s expert added the price of each vertical feature to the price of BellSouth’s basic local service when comparing the costs of PrimeCo’s and BellSouth’s services. See

6/ As noted below, however, PCS continues to be subject to technical limitations that prevent it from becoming a substitute for wireline service, even if it were competitive on the basis of price.

7/ Roy Neel, President of the United States Telephone Association, recently testified that PCS is not today a price-competitive alternative to wireline local service. See In re BellSouth Telecomm. Entry into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecomm. Act of 1996, Docket No. 97-00309, Transcript of Proceedings, at 218 (May 7, 1998) (ex. J).

8/ This figure was derived by (1) multiplying BellSouth’s estimate of 35,000 PCS users (BST Br. 10) by its estimate of the number of PCS users (26 percent) who use PCS as their principal telephone service (BST Br. 12) and (2) dividing this total (9,100) by the number of loops owned by BellSouth in Louisiana as of December 31, 1997 (2,256,180) plus the 9,100 PCS users who principally use PCS. In one sense this method compares apples (PCS users) to oranges (loops), but given that each PCS user is likely to have only one PCS account or “line,” comparing the number of PCS users to the number of loops is appropriate.

BST Banerjee Aff. at 4, 6-7. This results in an increase of more than \$13.00 in the price of monthly service from BellSouth that was used in the comparison. See id. at 6, 7 & n.13. However, the statistics cited in BellSouth's own study show that residential customers with low to moderate usage of their telephones -- precisely those customers that BellSouth claims could pay less with PCS^{9/} -- are likely to use no more than one vertical feature. See id. at 16. BellSouth's comparison is therefore a false one: the price of PCS service should be compared to what BellSouth's customers actually pay, which is much less than what BellSouth assumed. There is no basis for the assumption that a BellSouth local customer who purchases no vertical features would be willing to switch to a more expensive PCS service because it includes vertical features that the customer had never previously used. BellSouth's study thus generates inflated percentages of BellSouth customers who would be likely to switch to PCS on the basis of price.^{10/}

BellSouth also relies heavily on the recent introduction by AT&T Wireless of AT&T Digital One Rate, a PCS plan that has been advertised as offering rates as low as 11 cents per minute for all calls. See, e.g., BST Br. at 14. When the actual terms of AT&T Digital One Rate are known, however, it is clear that BellSouth's local customers are unlikely to abandon their wireline service in favor of this PCS plan. Unlike BellSouth's residential service, which offers unlimited local calling for a flat rate, AT&T Digital One Rate offers a limited number of calling minutes for a flat monthly fee, with additional charges for each minute that exceeds the established number. Specifically, AT&T Digital One Rate offers three options: 1400 minutes for \$149.99 per month, 1000 minutes for \$119.99 per month, and 600

9/ See, e.g., BST Banerjee Aff. at 21 ("BST customers with relatively 'low' to 'medium' usage of local and intraLATA toll services would be the most likely to switch to PCS offerings if minimum cost were the sole criterion for doing so."). BellSouth concedes that the higher-usage PCS plans are more expensive than BellSouth's local service. See id. at 21-22.

10/ BellSouth suggests that non-price considerations, such as mobility and one-stop shopping, could also induce BellSouth customers to switch to PCS. See BST Br. at 14. BellSouth ignores, however, the far greater *inconvenience* that would result from a customer's elimination of his or her home wireline phone, based on the technical deficiencies of PCS discussed below.

minutes for \$89.99 per month, with each option charging an additional 25 cents for every minute in excess of the allotted number. See http://www.attws.com/nohost/cellular/ce_new4.html (downloaded July 20, 1998). In addition, subscribers to AT&T Digital One Rate must enter an annual contract (with a cancellation fee of \$10 per month remaining on the contract) and purchase a digital multi-network phone from AT&T (at a cost of \$199 or \$249, depending on the model). See id. No matter how AT&T promotes this plan, it is plainly a very different product -- and far more expensive -- than the basic residential local service that BellSouth provides, whether for low or high volume users.

Equally importantly, there are also important technical differences that prevent PCS from serving as a substitute for wireline service. Among other technical limitations, PCS providers do not offer service that allows the use of more than one PCS handset with each PCS subscription and telephone number. A customer who wished to use PCS as a substitute for wireline service thus would be unable to have more than one phone without having two separate subscriptions, each with substantial monthly payments, and each with a different number.^{11/} Moreover, households wishing to use data services, such as for Internet access, could not come close to the transmission speeds available through wireline service, not to mention that they would have to purchase an additional PCS handset and subscription to avoid connecting their only handset to a modem each time a data service was accessed. In addition, 911 calls placed from wireless phones do not automatically transmit the location of the caller, and wireless carriers are not required to institute a technical solution to this problem until 2001.

Finally, the Commission and the industry have not yet established methods and procedures for porting telephone numbers between wireline and wireless carriers.^{12/} As wireline-wireless number portability is currently conceived, wireless subscribers whose telephone numbers include NPA-NXXs

11/ For example, a customer could not even have one phone on the lower floor of a house and a second phone on the upper floor without paying a double rate -- and even then the phone numbers of the two handsets would be different.

12/ See generally North American Numbering Council, Local Number Portability Administration Working Group Report on Wireless Wireline Integration (May 8, 1998) ("NANC Report") (ex. K).